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LAWYERS IN MADRAS IN THE 17TH AND 18TH CENTURIES.

For the first 40 years after the acquisition of Madras by the East India Company in 1639, there was little scope for the profitable existence of lawyers. The place was not very populous, there were no regularly established Courts, and the causes that came on for disposal before such Courts as there were, were of a simple nature not requiring the services of trained lawyers. It was some years before the place developed from a small trading factory, occupying a few acres of ground and having a few fishermen's huts to the south of it, to the populous centre which, with the development of the Company's power, it was to become later. In this respect Madras differed from Bombay which, even at the time it was granted to Charles II by the King of Portugal as a marriage dowry, had already had established in it a regular system of law (that is, the Portuguese law) and regular Courts where practitioners versed in that law exercised their profession. Even after Madras became a regular settlement with a large and growing population and a system of Courts in the eighties and nineties of the 17th century, there were few inducements for trained practitioners from England to settle there. As regards Indians, there does not seem to have been even a single instance of an Indian taking to the practice of law in the Courts of Madras in the 17th and 18th centuries.

The general attitude of the Company towards the profession was not such as to encourage the settlement of respectable practitioners in their overseas possessions, at least in the beginning. It has to be remembered that throughout the 17th century and the greater part of the 18th, the Company,

on account of the monopoly of trade granted to it, imposed severe restrictions upon and exercised strict control over the settlement of Englishmen in any of their factories or possessions. In July, 1674, the Court of Committees of the Company resolved that no Attorneys or Lawyer's clerks should be sent out to serve in the Court of Judicature at Bombay, as suggested by Governor Gerald Aungier " in regard of the inconvenience that may arise thereby, to the increasing of law suits and differences among the inhabitants"; and in 1677 and 1678 they ordered the Bombay Council "to allow no more than are absolutely necessary" as well as "to admit of no Solicitors or Attorneys to plead or manage causes, but such as you shall first allow of upon your knowledge of them to be men of good and honest reputation". The Company further directed them to encourage litigants to manage their own cases. (Fawcett's First Century of British Justice in India, page 61.)

Nor was the attitude of the authorities in India very encouraging or sympathetic. In forwarding to the Company in 1697 the petition of Elihu Yale, the ex-Governor of Madras, wherein he had complained that legal advice was denied him, the Madras Council observed thus:—

" We have no professed Councillors at Law or Attorneys at Madras, nor do we need them in cases relating to the custom of merchants where every man has liberty to plead his own cause."

Another reason apparently for the practitioners of law not thriving in the Company's Indian Possessions in the 17th Century was the strong attitude against the importation of English Law with all its technicalities, adopted by the Company, especially when the masterful Sir Josiah Child presided over its destinies. In answer to a letter from Mr. Vaux, Judge of the Court of Judicature in Bombay, who had said that "the laws of his country should be the rule he designed to walk by", Sir Josiah Child wrote to him that he expected *his* orders to be his rule and not the laws of England "which were an heap of nonsense compiled by a few ignorant country gentlemen who hardly knew how to make laws for the good Government of their own private families much less for the regulating of Companies and foreign commerce (Fawcett, page 134). Writing to Surat on 14th July, 1686, the Company said that the instructions contained in their several letters were "to have the nature and force of law" (L. B., Vol. VIII, page 160.) Writing to Fort St. George the Company said that all their

orders and directions have the force of laws in Madras and appointed three of the members of Council there " to make a collection out of all our last seven years General Letters of all the orders and directions we have given you". The scant courtesy paid by the Company to the Common Law of England as applicable to Indian conditions found apt expression in the Letter to Surat dated 3rd February, 1687. " The Common Law of England being peculiar to this Kingdom and not adapted in any kind to the Government of India and the nature of the people, as we have formerly written to you and have found by long and useful experience". (L. B., Vol. VIII, page 265.) An expert profession like the legal cannot flourish in a place, if the Laws to be administered by the Courts there are contained in unpublished letters and despatches. It must be said that this particular tendency on the part of the Company was of temporary duration, and disappeared with the disappearance of Sir Josiah Child from the counsels of the East India Company.

Again, barring two exceptions, the whole of the judicial machinery of the Company in Madras during the 17th and 18th centuries till the establishment of the Recorder's Court in 1798 was manned by laymen who have in all climes and at all times looked askance at the professional lawyer. The two exceptions were Sir John Biggs and Mr. Dolben who presided over the Court of Judicature at Madras, the former from 1687 to 1689 and the latter from 1692 to 1694, periods far too short for any marked impression to be left behind.

I have not been able to find out the existence of a single lawyer practising in the Courts of Madras before 1688. In that year the Company, in their despatch to Fort St. George, observed as follows:—

" We would have all persons be allowed to plead their own causes before any of our Courts of Judicature if they desire it, or at their election to make use of some allowed Attorney to plead for them, but no Attorney shall be permitted to plead for any person until he be first allowed to be an Authentick Attorney by Order of Council in writing, and no Attorney shall have that allowance from you till he has paid five pagodas into the Company's cash for such his allowance to officiate as an Attorney (*Quamdiu se bene gesserit*); and you are to appoint what moderate fees they may take of their clients, and what punishment shall be inflicted in case any of them should ask or receive more than their allowed fees; and for paupers the Judge is to appoint some Attorney to appear and plead gratis, as Sir John Biggs knows the manner is here in England, but what degree of estate shall be accounted pauper with

you at Madras, you must resolve among yourselves; a man who swears he is not worth £5 is esteemed a pauper in England, but it may be two pagodas is as good a poor man's estate at Madras as £5 is here." (Public Despatches from England, Vol. VIII.)

This despatch may be taken as the first definite Charter pertaining to the legal profession in Madras. How many availed themselves of the privileges we have no definite means of ascertaining, but that English Lawyers began to settle down in Madras after that date appears from scattered references to them in public records and the writings of travellers. In a letter bearing date 10th February, 1697, from Fort St. George to the Company there is reference to an Attorney by name John Coventry removed for "malpractice". In Charles Lockyer's "An Account of the Trade in India containing Rules for Good Government in Trade, Price Courants and Tables", published in 1711, the following not very complimentary reference occurs with regard to the legal practitioners in Madras:—"Lawyers are plenty and as knowing as can be expected from broken Linnen Drapers and other cracked tradesmen who seek their fortunes here by their wits". Thomas Salmon, in his "Modern History or the present State of all Nations", published in 1724, refers to "Two or Three Attornies" belonging to the Court of Judge Advocate. Alexander Hamilton in his "A New Account of the East Indies", published in 1727, refers to Attorneys and Solicitors pleading in form before Mayor and Aldermen. Attorneys "on horseback" found a place in the procession which inaugurated the Mayor's Court under the Charter of 1726. Col. Love estimates the number of lawyers practising in Madras in 1776 at only six. (Vestiges of Old Madras, Vol. III, page 139.) After the inauguration in 1798 of the Recorder's Court at Madras, Sir Thomas Strange, Recorder, compiled a list of legal practitioners in Madras in 1799, and there were only 13 of them. (*Ibid.*, page 477.) Apparently in the 18th century there was some limit placed on their number, but I have not been able to discover what the limit was. A petition to the Mayor's Court by one Robert Sloper dated 14th June, 1743, for being admitted as an Attorney, runs as follows:—

To the Honourable the Mayor's Court at Madraspatnam. The humble petition of Robert Sloper, showeth:

That the office of an Attorney in this Hon'ble Court having become vacant by the death of Mr. John Russell, your petitioner

humbly begs leave to offer himself to succeed him in that employ, in which your petitioner will not fail using his utmost endeavours to deserve the notice of this Hon'ble Court by acquitting himself of the trust reposed in him with diligence and fidelity.

Your petitioner as in duty bound shall ever pray.

William Dumbleton,
Attorney for Petitioner.

Order passed on Tuesday, the 14th June, Anno Domini, 1743.

Mayor's Court at Madraspatnam.

"The said Robert Sloper is admitted an Attorney of the said Court and sworn in".

Noah Cassamajor,
Registrar.

(Records of Fort St. George; Pleadings in the Mayor's Court 1742 to 1743, page 106.)

The references in the above petition to "vacancy" and "succession" suggest a limit placed on those admitted to practice.

The Company's despatch of 1688 set forth above shows that no Attorney was to be permitted to plead for any person without an Order of the Governor and Council in writing. Whether in the beginning it was further necessary to be formally enrolled by the Court where he intended to practice does not appear, but by 1743 as would appear from the petition of Robert Sloper set forth above, that had become necessary. There is no reference to legal practitioners in the Mayor's Court Charters of 1686, 1726 and 1753. Not till we come to the Charter of 1798 constituting the Recorder's Court at Madras do we find a definite place given to them. The relevant clause of that Charter runs as follows:—

"And we do further authorise and empower the said Court of the Recorder of Madras to approve, admit and enroll, such and so many persons, being *bona fide* practitioners of the law in the said Mayor's Court at Madras, or having been admitted Barristers at Law in England or Ireland, or having been admitted Attornies or Solicitors in one of our Courts at Westminster, or being otherwise capable according to such Rules and Qualifications as the said Court shall, for that purpose, make and declare, to act, as well in the character of Advocates as of Attorneys, in the said Court, and which persons, so approved, admitted and enrolled, as aforesaid, shall be, and are hereby authorised to appear, and plead and act, for the suitors of the said Court, subject always to be removed by the said Court from their station therein, upon reasonable cause; and we do declare that no other person or persons

whatsoever, shall be allowed to appear and plead or act in the said Court of the Recorder at Madras, for and on behalf of such suitors, or any of them: Provided always, and we do hereby further ordain and declare that no person, from and after the date of these, Our Letters Patent, other than the said persons, being *bona fide* practitioners of Law in the said Mayor's Court at the time of the Publication of this our Charter, shall be capable of being admitted or enrolled, or of practising in the said Court, without the licence of the said United Company, for that purpose first had and obtained."

The relevant clause in the Charter of 26th December, 1800, establishing the Supreme Court of Madras is practically the same.

Something may be said about the disciplinary jurisdiction exercised over the legal practitioners. The Company's despatch of 1688 so often referred to above, contemplated infliction of punishment on Attorneys asking for or receiving more than their "allowed fees". In 1696, an Attorney by name Daniel Dubois was debarred from practice for being guilty of contempt and for his suspected connivance in the escape of his friend one Thomas Gullocke from the Marshall's Custody. (Love's Vestiges of Old Madras, Vol. I, page 575.) In 1697, there is reference to one John Coventry removed for malpractice. What the malpractice consisted in does not appear. (*Ibid.*, page 551.) In 1729, Mr. Henry Rumbold practising in the Mayor's Court, was ordered off to England without any reasons given. He petitioned the Home Authorities of the Company. They showed a better appreciation of the position of a lawyer, and, in permitting him to return and directing the Madras authorities to employ him as their Attorney in all cases, observed as follows:—

" Mr. Henry Rumbold has petitioned us to return to your place, from whence we find he was ordered home, but for what reason does not appear, either in your Letters or Consultations, which is a pretty good proof of what he asserts that he was sent off shore by an arbitrary order of the late Governor's, for having been concerned as an Attorney against him in some disputes that he had in the Mayor's Court." (Fawcett, pp. 221-222.)

In 1743 the Mayor's Court found one Henry De Veil "guilty of misdemeanours in his office of an Attorney" and fined him 50 pagodas and directed him to "pay all such charges as have arose in the several complaints exhibited against him". (Records of Fort St. George-Mayor's Court Minutes, 1743 to 1744, pages 37, 41, 42, 43, 45.) In 1744, William Dumbleton was fined 10 pagodas for "not having behaved himself in a proper manner during the examination of the matter in dispute, particularly to the Mayor". (*Ibid.*, p. 170.) In 1784, the

Grand Jury charged Mr. Jones, an Attorney, of having connived at his Dubash acting as "an encourager of litigious suits at Law" and of being "a common Barrator"; and also of having interfered with the fishery of San Thome river in such a manner that the price of fish was much enhanced. The Governor and Council, acting as Court of Appeals, passed a Resolution "incapacitating him from practising as a Solicitor in that Court". The Mayor's Court, on being informed of the same, in its turn, expelled him from practising as an Attorney of that Court. (Love, Vol. III, p. 303.)

It will be interesting to inquire whether there were any regulations governing practitioners' fees. The Despatch of 1688 authorised the President and Council to fix "What moderate fees they may take of their clients and what punishment shall be inflicted in case any of them should ask or receive more than the allowed fees". It also directed that for paupers, the Judge was to appoint some Attorney to appear "Gratis". I have not been able to get at the Table of Fees fixed in the beginning. The Mayor's Court, as authorised by the Charter of 1726, settled, on 29th August, 1727, a Table of Fees for the several proceeding in that Court, and in that under the heading "Attorney's fees" appear the following:—

"All persons that employ an Attorney to act for them in any cause are first to deposit in his hands 3 pagodas, of which he is to give an account when the cause is ended.

Attorney fee one pagoda.

For writing petitions eighteen fanams each side of a sheet of paper. Pleading each Court day and attendance nine fanams.

Translating any paper eighteen fanams a side; to be paid out of that to the Translator six fanams.

Attendance on a client in the White Town nine fanams.

Attendance on a client in the Black Town twelve fanams.

For drawing out the interrogatories in the whole cause 18 fanams."

—(Wheeler's Madras in the Olden Time, Vol. III, p. 29).

Evidently there were complaints that the Attorneys were charging more fees than they were entitled to, for we find that the Mayor's Court had to pass the following order on 27th March, 1744:—

" It is this day ordered that no officer belonging to this Court shall either directly or indirectly from the day of the date hereof receive any sum or sums of money other than their stipulated fees from any person having a suit in this Court while the same is therein depending; and further, that no Attorney of this Court shall refuse to take any person's cause in hand on being feed with the customary fee for that end, on pain of being dismissed

the service of this Court. . . . That in case any of the inhabitants find themselves henceforward aggrieved, they may receive redress by applying to this Court who will dismiss any of the officers thereof, that shall be found guilty of transgressing the above orders."

(Records of Fort St. George-Mayor's Court Minutes, 1743 to 1744, p. 42.)

Even the above order was apparently more honoured in the breach than in the observance, for in 1791 we find the Governor and Council animadverting on "the exorbitant charges of the Attorneys of the Mayor's Court".

The system of double agency which was to become a subject-matter of hot discussion in the 19th and 20th centuries was not in force in the 17th and 18th centuries. Barristers did not appear on the scene till late in the 18th century. The first Barrister to arrive in Madras was Benjamin Sulivan. The Supreme Court having been established in Calcutta under the Regulating Act of 1777, he came over to India in 1773 with the intention of settling down to practise there and shaking the far-famed pagoda tree. On the way he touched at Madras which was then being convulsed with the aftermath of the death of Governor Lord Pigot during his imprisonment by the majority of his Council. Mr. Whitehill, the acting Governor, consulted him on the legal aspects of the case, and induced him to stay on in Madras. A new post of "Standing Counsel" was created, and he was appointed to fill it. He played a large part in the public life of Madras during the remaining years of the century and secured a well-earned reward by being appointed as one of the first two-puisne judges of the Supreme Court in 1800. Apparently the only other Barrister who thought it worth his while to settle down in Madras to practise was Alexander Anstruther who came out in 1798 and became Advocate-General after the establishment of the Supreme Court. With such few Barristers, there was absolutely no scope for the importation of the system of double agency, and every practitioner was allowed "To appear and plead and act".

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SUMMARY OF ENGLISH CASES.

BERESFORD *v.* ROYAL INSURANCE COMPANY, LIMITED, (1937) 2 K.B. 197.

Insurance—Policy—Life insurance—Policy not excepting suicide—Suicide by assured while sane—Administratrix appointed by Court—If can recover the amount due under the policy—Public policy.

An insurance policy provided that "unless it is otherwise provided in the schedule, this policy is free from all restrictions as to residence, travel and occupation and subject to endorsed conditions is indisputable". Cl. (4) of the conditions provided: "If the life or any one of the lives assured shall die by his own hand, whether sane or insane, within one year from the commencement of the assurance, the policy shall be void as against any person claiming the amount hereby assured or any part thereof" with an exception in favour of any *bona fide* interest acquired by a third party before such death. *R*, the holder of the policy, shot himself, while sane. The policies were more than one year old by then and up till death the premiums were regularly paid. *R's* personal representatives claimed the amount due under the policies and the main defence was that as *R* died by his own hand, the policies became void. Swift, J., held that while the law would not enforce a contract entered into in contemplation of a man committing a felonious act, there was no reason "why when a perfectly legal contract had been entered into and had been observed by the parties for many years, one party to it should escape the liability which fell on him by alleging that the other had terminated it in an illegal manner when he had stipulated as part of the consideration for the bargain that he would not dispute it except for particular reasons none of which had occurred" and that there was nothing contrary to public policy in holding the insurance company should pay having regard to all the circumstances of these policies.

Held, on appeal, that however absolute in terms the policy might be the court in its inherent jurisdiction will not enforce it as it is illegal and contrary to public policy. The fact that the claim is made by an administratrix appointed by the Court does not make any difference, for it is a promise to pay to the assured only, and can be enforced, if at all, by the personal representative as such and not in her own right. If the assured had taken his life while insane, the fact would not have constituted a defence, as the act of an insane person is not in law his act. But suicide when sane is by English law a felony.

ASHBY *v.* TOLHURST, (1937) 2 K.B. 242.

Motor car—Parking of on private parking ground—Car Park Ticket—Issue of, on fee for same—Cars left at owner's risk—Car

stolen from park by negligence of attendant—If owner of park liable.

The plaintiff, owner of a motor car, parked his car at a private parking ground on payment of the parking charges and received a ticket headed "Seaway Car Park; Car Park Ticket". There was printed on it "Received 1*s*. The proprietors do not take any responsibility for the safe custody of any cars or articles therein nor for any damage to the cars or articles however caused......all cars being left in all respects entirely at their owners' risk. Owners are requested to show ticket when required". Somebody posed as a friend of the plaintiff and took away the car from the attendant. The key of the car was with plaintiff but the thief had obtained access to it by putting his hand through the windscreen. The car could not be found in spite of search and the plaintiff thereupon brought this action against the defendants, owners of the park for damages caused by the negligence of the attendant in handing the car to a stranger without production of the ticket.

Held, the relationship of the parties constituted by the terms of the ticket was one of licensor and licensee and not a relationship of bailment. It only means that the holder of the ticket is entitled to park his car in Seaway Car Park but this does not mean that the proprietors are going to be responsible for it. Therefore the relationship in itself would carry no obligations on the part of the licensor towards the licensee in relation to the chattel there, no obligation to provide anybody to look after it, and no liability for any negligent act of any person in the employment of the licensor. Even if the relationship was one of bailment, the liability was excluded by the clause "the proprietors do not take any responsibility for the safe custody of any cars or articles therein".

DAVIES *v.* MAY, (1937) 2 K.B. 260.

Coal Mines Act, 1911—*Manager of a coal mine—Failure to provide proper refuge holes under S.* 44—*Duty of maintenance cast on others—If manager personally liable—Effect of Ss.* 75 *and* 102, *Sub-S.* (5).

Section 102, sub-S. (5) of the Coal Mines Act, 1911, provides that "No prosecution shall be instituted against the......manager ....for any offence under this Act, not committed personally by such........manager......which can be prosecuted before a court of summary jurisdiction, except by an inspector or with the consent in writing of the Secretary of State......" and S. 75 provides that "Any person who contravenes or does not comply with any of the provisions of this Part of this Act shall be guilty of an offence against this Act, and, in the event of any contravention of

or non-compliance with any of the provisions of this Part of this Act by any person whomsoever, the owner, agent, and manager of the mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing those provisions to prevent that contravention or non-compliance." The manager of a mine was charged by the respondents who were not the Inspector and had not the consent in writing of the Secretary of State for the prosecution, on whom a personal duty of supervision was imposed. The charge was that the manager failed to provide proper refuge holes and had thus contravened the provision in S. 44 of the Act. The person that is responsible for the making, maintenance, etc., of the refuge holes is the fireman and the manager would not in the normal course of his duties take part in the actual making, repairing or maintaining the refuge holes.

Held, that there is no express mention of the manager in S. 44 and though they may be offences for which the manager may be prosecuted, if the prescribed conditions are fulfilled, are nevertheless not offences committed personally by the manager. There are sections in the Act which impose a personal liability upon the manager and this is not one of them.

Hannaford v. *May,* (1935) 2 K.B. 385, distinguished.

COOPER *v.* WILSON AND OTHERS, (1937) 2 K.B. 309.

Police—Sergeant—Statutory month's notice of resignation—Expiry of—Chief constable's order of dismissal—Appeal by sergeant to Watch Committee—Watch Committee confirming order of dismissal—Month expired by then—Resignation effective by then—Watch Committee functus officio *by then—Order of dismissal invalid—Chief constable present at appeal deliberation—Opposed to natural justice.*

The plaintiff was an ex-sergeant of the Liverpool police force. He joined service in 1919 and became sergeant in 1933. On 27th July, 1933, he handed in the statutory month's notice of resignation. On August 8, however, the police preferred against him certain charges of offences against discipline, which arose out of the state of mutual hostility prevailing in his domestic life between his wife and himself. On August 14, the chief constable, after an inquiry in which he heard evidence upon the charges, purported to sentence him to dismissal. The head disciplinary authority of the force and the domestic tribunal of appeal under the Police Regulations was the Watch Committee. That Committee, on August 29, dismissed the plaintiff's appeal and also confirmed the chief constable's order of dismissal. Thereafter the Watch Committee refused to hand over to him his accumulated rateable deductions from pay. Had the plaintiff effectively resigned he would

have been entitled to this sum absolutely. The chief constable was present at the deliberations of the Watch Committee. The plaintiff therefore sued the chief constable of Liverpool, a Police Superintendent, and the members of the Watch Committee of Liverpool for a declaration that he was not validly dismissed, that his resignation was effective and that he must be paid the deductions made from his pay while in service.

Held, by the Court of Appeal (Macnaghten, J., dissenting) that the right to dismiss the police constable in a borough remains solely in the Watch Committee. The resignation ran on until August 24 after which date the plaintiff would cease to be a member of the force by reason of the resignation. Therefore when the Watch Committee met on August 29, the plaintiff was no longer a member of the force and the Watch Committee could not *ex post facto* discharge him as from August 14. They had no power and they were unable in law to decide that an ex-member of the force should be treated as discharged. The order of the Watch Committee dismissing him on August 29 was therefore a nullity. From the fact that the plaintiff appeared before the Watch Committee, it cannot be taken that the plaintiff withdrew his notice of resignation.

Where the plaintiff is alleging that he has never been dismissed, he has a right of suit for a declaration to that effect. Neither the fact that he has a remedy to appeal to the Secretary of State nor the fact that he has the power of obtaining a writ of *certiorari* to quash the order of dismissal prohibit his access to the court for a declaration that his dismissal was invalid.

Further the presence of the chief police constable at the hearing of the appeal by the Watch Committee as to whether they would or would not affirm his sentence was contrary to natural justice and that invalidated the decision of the Watch Committee and entitled him to have a declaration to that effect.

PALMER *v.* WATTS, WATTS AND COMPANY, LIMITED, (1937) 2 K.B. 360.

Workmen's Compensation Act (1925), *S.* 9, *sub-S.* (4)—*Accident—Partial incapacity—"Work in the same grade in the same class as before the accident"—Meaning of—It means work immediately before accident, or at any time before the accident.*

Workmen's Compensation Act, 1925, S. 9, sub-S. (4) says that "If a workman who has so far recovered from the injury as to be fit for employment of a certain kind has failed to obtain employment and it appears to the County Court Judge........that, having regard to all the circumstances, it is probable that the workman would, but for the continuing effects of the injury, be able to obtain work in the same grade in the same class of employment as

before the accident;......the judge shall order that the workman's incapacity shall be treated as total incapacity resulting from the injury for such period, and subject to such conditions as may be provided by the order......"

The workman was employed as a pumpsman and hitcher at a colliery of the appellant for seven years and previously he had been employed as a shipwright. In 1936 he met with an accident to his index finger of the right hand and as a result of it the finger had to be amputated. As a result he was not fit to carry on work as a shipwright. He first got compensation on basis of total incapacity and on June 27, 1936, he applied for arbitration on the question whether he was entitled to compensation on the basis of total incapacity. It was found by the County Court Judge that the workman would not be able to obtain work as a pumpsman and hitcher and that he would have been able to obtain work as a shipwright but for the injury.

Held, that under the section what has to be seen is the employment in which the man was before the accident and discover whether work in that employment is work in the same class of employment as the work which the man now says he would be able to obtain but for the accident. That does not justify an inquiry into work in which the man was engaged at some period before the accident but which had ceased to be his work at the time of the accident.

THE KING *v.* RULE, (1937) 2 K.B. 375.

Criminal Law—Libel—Communication of to a member of Parliament for the constituency—If privileged.

The appellant *R* was charged with publishing defamatory libels, knowing them to be false. *R* is an inhabitant and an elector of Southampton Borough. He wrote to Mr. *C. E.*, one of the members of Parliament for that County, the matters complained of, against a detective-sergeant of police and a Justice of the Peace with the object of inducing him to help *R* to bring those matters to the attention of His Majesty's Ministers.

Held, that a Member of Parliament to whom a written communication is addressed by one of his constituents asking for his assistance in bringing to the notice of the appropriate Minister a complaint of improper conduct on the part of some public official acting in that constituency in relation to his office, has sufficient interest in the subject-matter of the complaint to render the occasion of such publication a privileged occasion. In the absence of evidence of malice on the part of *R,* he could not be convicted.

MUTUAL FINANCE, LIMITED *v.* JOHN WETTON AND SONS, LIMITED, (1937) 2 K.B. 389.

Contract—Guarantee—Fear of prosecution of his brother operating in the mind of guarantor—Other party aware of that intention—Undue influence.

The defendant company was originally founded by *W* family, consisting of a father and two sons—namely, *W, P* and *J.* The first two *W* and *P* were directors at all material times and *J* was the director until 1931. After that date *J* had ceased to be a director of that business and started a business by himself. The plaintiff company was a finance company formed for the purpose of financing purchasers of motor cars and lorries on hire purchase system. The system is that after the sale is concluded between a buyer and seller, the plaintiff company purchase it from the seller and let it out on hire purchase to the buyer. *J* and one *C* approached one *S* company for sale to them of a lorry on hire purchase system and having settled the sale requested the plaintiff company to finance them. For that purpose the plaintiff company required among other things, a counter-guarantee from the defendant company. *J* furnished accordingly a guarantee purporting to be signed by *W* and *P* and witnessed by *J* but as a fact the document appeared to have been concocted by *J* without the knowledge of *W* his father or *P* his brother and got a cheque for £750 to the seller company and the lorry was handed over to *C.* But in 1936 the guarantee was repudiated by the Secretary of defendant company. Thereupon the plaintiff company sent their managing agent *L* to defendant company and he went and threatened *P* that he could take out a warrant for arrest of *J.* *P* said that his father was very ill and that if *J* were arrested, it might cause his father's death. *L* then insisted on a substituted guarantee. No definite threat in terms was used, but *L* knew that though *P* might not have objected to his brother being prosecuted, he *P* was prepared to consider his proposal owing to his father's health. Both parties had this idea of prosecution in mind and *L* meant and intended that the possibility of a prosecution should influence *P* in undertaking the liability and *P* was to his knowledge so influenced.

Held, that this guarantee was vitiated by undue influence and the guarantors defendants could repudiate it. Undue influence in the Chancery Courts might exist where a promise was extracted by a threat to prosecute certain third persons unless the promise were given. Not only is no direct threat necessary, but no promise need be given to abstain from a prosecution. It is enough if the undertaking were given owing to a desire to prevent a prosecution and that desire were known to those to whom the undertaking was given.

WEST *v.* AUTOMATIC SALESMAN, LIMITED, (1937) 2 K.B. 398.

Practice and procedure—County Courts Act (1888), *S.* 157—*Claim proceedings—Interpleader issue—Claimant successful—Claim to damages for wrongful seizure not claimed therein—Later suit for damages—Barred by S.* 157.

A company called A. S., Ltd., obtained a judgment in the County Court against one *W* and improperly levied execution upon the furniture of a Mrs. J. W. against whom they had no claim or title. On her demanding her furniture, an interpleader issue was ordered in which she made a claim to the furniture but no claim to damages, and on that issue the Court made an adjudication in her favour for the furniture. Mrs. *W* then brought this suit for damages against the company in respect of the wrongful entry on her premises and the illegal seizure of the furniture.

Held, that she (Mrs. *W*) was barred from bringing the suit by reason of her failure to claim it in the interpleader proceedings. Section 157 of the present County Courts Act, 1888, specifically says that in such proceedings the Court "*shall also adjudicate* between such parties, or either of them, and the high bailiff, *with respect to any damage, or claim of or to damages,* arising or capable of arising out of the execution of such process by the high bailiff, and make such order in respect thereof . . . .", and as such there is an obligation to adjudicate not only in regard to a claim to the goods but in regard to damages.

Death v. *Harrison,* (1870) L.R. 6 Ex. 15, followed.

Salbstein v. *Isaacs & Son,* (1916) 1 K.B. 1 and Wigram V.-C.'s rule in *Henderson* v. *Henderson,* (1843) 3 Hare 100, referred to.

WHEATLEY *v.* LAMBTON, HETTON AND JOICEY COLLIERIES, LIMITED, (1937) 2 K.B. 426.

Workmen's Compensation Act (1925), *Ss.* 9 *and* 43—*Accident—Total incapacity—Compensation as for total incapacity paid—Subsequent accident and nystagmus—Also total incapacity consequent on it certified—If entitled to compensation for nystagmus also.*

One *J. W.* was a hewer in the respondent's collieries. In January, 1935, he met with an accident in the course of the employment and sustained an injury to his spine which totally incapacitated him. The employers paid him compensation at the full rate of 30*s.* a week till July, 1935, when he resumed work. He remained at work till September, 1936, when he again became incapacitated by reason of the same injury and he received the 30*s.* compensation again from that date. In October, 1936, while he was still incapacitated from the spinal injury, the certifying surgeon certified that the workman was suffering from miners' nystagmus and was disabled thereby from earning full wages. The workman therefore claimed com-

pensation in respect of miners' nystagmus at 24*s*. a week, though he was already in receipt of compensation on foot of the prior accident.

Held, that while a workman totally disabled through one injury is receiving compensation in respect of that, he cannot claim nevertheless to be entitled to receive in respect of a different injury or one or more different injuries compensation on the footing of total disablement. The position here is that from September, 1936, this workman was in fact totally disabled as a result of his spinal injury and he was in receipt of appropriate compensation on that basis. In October the second accident happened which consisted of the onset of the disease called miners' nystagmus, coupled with the disablement certified in the certificate. But at the date of the certificate, as he was already totally incapacitated for work, he had no element of capacity left in him which this new supervening accident could take away. The Court therefore added a declaration that should the workman recover from the injury sustained by the 1935 accident or cease to be totally or partially incapacitated for work as the result of the said industrial disease, he should be at liberty to apply for review claiming compensation on foot of disability from 1936 accident, that is, miners' nystagmus.

In re CRAVEN'S ESTATE: LLOYDS BANK *v.* COCKBURN, (1937) 1 Ch. 423.

Conflict of laws—Donatia mortis causa—*Donor domiciled Britisher—Money's in a bank in Monaco abroad—Power of attorney to son in respect of the moneys—Instructions to son later to collect the same from bank—Death of donor—Law applicable, English law or Monaco law.*

C, who was a British subject domiciled in England, had certain shares and moneys in a bank in Monaco. In 1934 she desired to put them into a joint account in the joint names of herself and her son but as it was not possible under Monaco law, she executed a power of attorney in respect of her monies in the bank. In 1935 she having a pending operation which might prove fatal in mind told her son to get the shares and the bank balance into his own name, as she wanted him to have them in case anything happened to her. Thereupon he (son) instructed the bank to transfer the shares and moneys to his name and the bank carried it out and wrote so to him. But before it was written, *C* died and her estate was administered in England. The question was if *C* had made an effective *donatio mortis causa* of the shares and moneys.

Held, that for a valid *donatio mortis causa,* three conditions are to be satisfied: (1) a clear intention to give but to give only if the donor dies, (2) the gift must be made in contemplation of death, (3) the donor must part with dominion over the subject-matter of the *donatio.* If the matter rested with the power of attorney alone,

there is nothing to prevent the principal dealing with the property notwithstanding it and therefore no parting with the dominion; but the later transfer of the property into the son's name transferred the dominion to the son. The question whether there has been a valid *donatio mortis causa* must be decided according to the English law as it arises in the administration of the estate, but what act constitutes parting with the dominion must be decided according to the foreign law.

In re GLYN VALLEY TRAMWAY COMPANY, (1937) 1 Ch. 465.

Company—Statutory company—Company closed down—Voluntary winding-up of—Debentures—Undertaking of the company assigned to debenture-holders—No charge—Yet assignment of equitable interest—Debenture-holder entitled to priority over unsecured creditors.

G. V. Tramway Company was incorporated by a private Act of Parliament of 1870 and under that and later Acts it continued to carry on and operate a tramway until 1935. But as since 1932 it was unable to trade at a profit, it was voluntarily wound up. It was registered in 1929 under the Companies Act so that all the provisions of Part IX of that Act applied to it. The company had created debentures which were issued under the provisions of the earlier Acts. The question was as to the rights *inter se* of the debenture-holders and the unsecured creditors of the company in the sale proceeds of its assets. By each debenture the undertaking of the company, its future calls, tolls and sums of money and all the estate, right, title and interest of the company in the same is assigned to the lender to hold to the lender until the loan with interest is satisfied. The debenture did not use the word "charge".

Held, the debenture was in a form apt to create in its holder an equitable interest in the undertaking of the company which must take precedence over the unsecured creditor and therefore it gave priority to them over the sale proceeds of the company also.

JOTTINGS AND CUTTINGS.

Previous Convictions.—Judges have often pointed out that it is not enough for a Court to do justice, but the Court must ensure that it is manifest that justice is being done. The weight attached to the knowledge that a defendant has been previously convicted is liable to be out of all proportion to its logical probative value, for which reason the law of this country forbids the use of previous convictions in order to assist in establishing guilt, except in clearly defined circumstances, *e.g.,* in order to show system. Hence an appearance of injustice may be created if a tribunal gives the impression that evidence of previous convictions, only available in the event of a

decision to convict, has been used in arriving at that decision. Two cases which may have conveyed this unfortunate impression (*Davies* v. *Griffiths*; *Murray* v. *Barnwell*) came before the Divisional Court by way of case stated on April 19. In each case the justices, having retired to consider whether the prosecution was entitled to succeed, returned to Court and, without making any pronouncement in open Court as to their finding, inquired whether there were any previous convictions against the defendant. In each case convictions were reported, and these were acknowledged by the defendant. Thereafter the justices again retired, and on their second return pronounced sentence. It appeared that in each case the justices had definitely decided to convict before learning of the previous convictions, and for this reason the High Court dismissed the appeals, but the Lord Chief Justice pointed out that the absence of any indication by the justices of an intention to convict, before they were informed of the previous convictions, was open to serious misconstruction. This would be avoided, and justice would not only be done but would be manifestly seen to be done, if justices were to announce their "verdict" in open Court before proceeding to pass sentence. We respectfully agree.—*L.J.*, 1937, *p.* 277.

Public Policy and Breach of Promise.—Public policy is a matter of legal topicality. During the last fortnight the House of Lords has been concerned with a promise to marry made while the promisor was situate in the twilight world between decree *nisi* and decree absolute. It now appears, from the trend of the argument, that the Law Lords may not be called upon (as was the Court of Appeal last week) to legislate judicially on public policy; theirs only to discover whether or no there be a distinction between the marriage tie before decree *nisi* and the marriage tie after decree *nisi.* Of marriage before decree *nisi* the law is clear, that it is an insuperable bar to a promise of subsequent matrimony [*Wilson* v. *Carnley,* (1908) 1 K.B. 729]. In the present case it is therefore being argued that the delayed operation of the decree is merely a statutory device in the nature of a *locus paenitentioe.* Against this it is contended that a decree absolute is the only proper termination of the marital status, and that the decree *nisi* is nothing more than a necessary preliminary. If the former position be accepted, then there appears to be no reason of public policy to prevent a guilty party, after decree *nisi,* promising to make an "honest woman" of the guilty intervener. On the other hand, if such a promise be valid, the doctrine of "anticipatory breach" may cause some embarrassment. The determination of this point has long been awaited by the legal world, and the arguments will be followed with great interest.—*L.J.*, 1937, *p.* 278.

Motorists Asleep.—The Divisional Court made short work this week (*Times,* April 20) of a decision by magistrates that a motorist cannot be convicted of careless driving if, whilst in control of a motor car in motion, he falls asleep. The most obvious of all duties for the motorist when he is driving his car is to keep his wits about him. A driver who allows himself to be overcome by sleep is neglectful of his first duty to his fellow citizens. We should even be prepared to see an information for reckless driving preferred in such a case. The motorist who continues at the wheel when he feels that sleep is mastering him takes a risk which he must realise, or which any reasonable man must envisage. No certain line can be drawn between reckless and careless driving; but we suggest that in the first case a man faces a risk which he either can see or, as a reasonable man, ought to see, is close upon him, whereas in the second case a man's care and attention have, apart from any special consideration of his state and environment, fallen below the standards to which ordinary reasonable men conform. Into the first category we think the conduct of a man who continues to drive when he must feel that he is unfit to do so obviously falls.—*L.J.,* 1937, *p.* 278.

The Crown Pays "In Any Event".—You have no doubt observed the finding of Lewis, J., in the Revenue case *Brown* v. *Adamson* that a man is not entitled to a deduction in his liability for income-tax in respect of a non-resident housekeeper employed by him and who spends the day performing her duties in his house, but sleeps elsewhere; and that "resident" as used in S. 22 of the Finance Act, 1924, means something more than "present at the appellant's house to an extent sufficient to carry out her duties."

The most remarkable part of the case, however (apart from the ingenuity in argument of Mr. Cyril King, K.C., is the evidence of growing recognition that the cost of ascertaining or determining the law ought not in every case to be borne by a single private individual.

"The Solicitor-General", it is recorded, "stated that as the case would govern the position of a good many people, some of them of modest means, the Crown had agreed to pay the appellant's taxed costs in any event."—*L.J.,* 1937, *p.* 290.

Birrell on Asquith.—Augustine Birrell, K.C., it will be remembered, was a colleague of Asquith in the last Liberal Government, a man of great reputation and a wit; but who was foolish enough to accept the Chief Secretaryship for Ireland at the worst possible time and thereby failed, like most if not all his predecessors in the same office, to enhance his political reputation and prospects. Only two

or three, and they Conservatives, have emerged from that ordeal without serious loss.

Mr. Birrell's autobiography has now been published under the title *Things Past Redress* (Faber and Faber), and is a book full of interest, philosophy and light. One passage on Asquith (afterwards Lord Oxford) may be cited:

"He took briefs as they came, nor did they come with any remarkable celerity, but whenever he had anything to do, he did it so well that you marvelled his progress was not actually quicker than it actually was. In the House of Commons it was the same. When he was not doing anything, and he never pushed himself to the front, it was easy to overlook him, but whenever something fell to his lot to do in the House it was performed with such ease and effect that we all began talking about him and marking him down as a coming leader. I suppose there were ups and downs in his career, but they were not noticeable to the outsider. A "splendid sameness" characterised it throughout. This was also observable in his literary style, for he wrote as well as he spoke. . . This quality of "sameness" was in keeping with his whole character. His architecture was classical, and had no room for Gothic side chapels, into which a poor sinner might steal and say his casual prayers, and come out and go away. You had to march straight up to the high Altar and proclaim your credo, or hold your tongue."—*L.J.*, 1937, *p.* 290.

Lord Dunedin's Recollections.—Besides his contributions to the law as expounded both in the Court of Session, of which, before his appointment as a Lord of Appeal, he was Lord President, and in the House of Lords, Lord Dunedin has more than once, in contributions to the Press sought to enlighten the English public of the distinctive features of Scots law, where it differs from English law, and where the two systems coincide; he also, some years ago, in an article in *The Times,* re-called some of his early experiences at the Scots Bar, and in his occasional appearances in arguing cases in the House of Lords, and of the English counsel whom he met there. Of Lord Deas, the last of the judges of the Court of Session to retain the board Scotch speech, he told an amusing story. The incident occurred at Glasgow, where a murder case was in the calendar, and for the defence of the prisoner an old and experienced counsel had been instructed. The evening after the trial the judge entertained several of the counsel at dinner, and, turning to them, he said: "I hope you young gentlemen took heed of the judeecious way in which Mr. S, conducted his case. He asked nane o' thae silly questions that you do, makin' things waur instæd o' better." Going on for a minute or two in this strain while Mr. S. sat beaming with delight, the judge then, without warning, continued: "To be

sure he hanged his client in his speech!" How Lord Dunedin himself was misunderstood on one occasion was amusing enough. An American lady whom he met at dinner wished to know what his work was, and this he explained, adding that as he had been a long time at it he had the somewhat unusual experience of sitting with colleagues every one of whom had in past days appeared before him. "How interesting," said the lady; "but not, I hope, for crime". He hastened to reassure her on this head. Of his distinguished predecessor in the office of Lord President of the Court of Session, Lord Kinross, he enlarged on one occasion to Sir Edmund Gosse, of his extreme politeness. It seemed that Lord Kinross was entertaining a large company at his country seat, among them being a certain Captain C. who was not a teetotaller, and who imbibed so much of his host's admirable claret that eventually he lay on the floor, unable to stir. He was to have returned to Edinburgh by the last train, but as this was impossible in view of his condition, Lord Kinross rang the bell and said to the butler, "Make up a bed in the blue room; Captain C. has kindly consented to spend the night here". —*L.T.*, 1937, *p.* 360.

Lord Dunedin's Waggish Comment.—Among those who as counsel not infrequently appeared in the House of Lords when Lord Dunedin was sharing in the appellate work of the House and who afterwards proved to be one of his colleagues, was Lord Blanesburgh, who, before his accession to the peerage, albeit only a peerage for life, was Mr. Robert Younger, and to whom it has been said that in those days Lord Dunedin administered a mock reproof for forgetting that he was a Scotsman and what was owing to Scotland. It happened on this wise: the appeal before the House came from the Court of Session, and the question for decision was whether under the will of a Scots lady a Scottish or an English charity should benefit. In Scotland the Scottish charity was successful, hence the appeal of the English charity. Mr. Younger championed the cause of the appellants, and, probably owing to his forcible arguments, he persuaded the House to reverse the Court of Session and hold that the English charity was entitled to the legacy. When all was over, Lord Dunedin remarked in a stage whisper: "Bob, you've won, but you know you are a blank renegade"—an observation which much amused those within earshot and particularly the future Lord Blanesburgh himself.—*L.T.*, 1937, *p.* 360.

Judicial Heredity.—Some time ago attention was called in this column to the Pollocks and Coleridges as signal instances of law running in the family, each being represented in the high places of the Bench in three generations. In this respect they are unique in England, but it is noteworthy that among the present members

of the judicial Bench there are many instances of fathers being followed by their sons. In the House of Lords there are two instances of sons succeeding fathers as Lords of Appeal, the two being Lord Thankerton, who is the son of Lord Watson, and presumably took a territorial title to avoid being confused with his father, the renowned "heckler" of Counsel; the other is Lord Russell of Killowen, whose father we remember best as the greatest advocate of his day and as the equally great Lord Chief Justice, but who, it must not be forgotten, began his judicial career as a Lord of Appeal and so continued till the death of Lord Chief Justice Coleridge opened the way for his return to the Law Courts as head of the Queen's Bench Division. If now we turn to the Court of Appeal and the High Court, we find a number of members of the Bench whose fathers were there before them. In the Court of Appeal there is Lord Justice Romer where his father sat a generation ago, and in the Chancery Division Mr. Justice Farwell; in the King's Bench Division there are Mr. Justice Finlay, Mr. Justice Charles, Mr. Justice Macnaghten, Mr. Justice Lawrence, each the son of a judge; and in the Probate, Divorce and Admiralty Division Mr. Justice Bucknill likewise follows the paternal calling. Surely this makes a remarkable record, probably unique in the history of the English Bench.—*L.T.*, 1937, *p.* 360.

The Law Revision Committee's Report.—The Sixth Interim Report of the Law Revision Committee, which has just been issued, is not the least interesting of the series. Most of the recommendations of the earlier Reports, such as the abolition of the rule that a personal action dies with the person, and the completion of the independence of married women as regards property and liability, have already got on to the Statute Book. The Fifth Report on the Statutes of Limitation appears to have involved too much examination for anything to be done about it. And now, with that Report only a few months old, there comes the Report on the Statute of Frauds and the Doctrine of Consideration. At present we can only briefly refer to it. Hereafter, we shall deal more fully with its very interesting and important contents and proposals. The subjects referred for the consideration of the Committee were: (*a*) Whether S. 4 of the Statute of Frauds and analogous sections of later statutes should be amended or repealed; and (*b*) whether and in what respects the doctrine of consideration requires modification; in particular its effect on the curious rule in *Pinnel's case* (1602), recognised by the House of Lords in *Foakes* v. *Beer* (1884), that a debt is not extinguished by the acceptance of a smaller sum in satisfaction.—*L.J.*, 1937, *p.* 337.

The Statute of Frauds.—The fourth and seventeenth sections of the Statute of Frauds have been for over 250 years the founda-

tion of the law of contract, and the extent of the litigation to which they have given rise has rivalled the importance of the enactments. Generally speaking, the effect is to prohibit the enforcement of all the more usual forms of contract unless a memorandum has been signed. The principle has its advantages. It places a check on unfounded claims. On the other hand, it enables unscrupulous persons to escape their bargains. As regards contracts for the sale of land, this latter result was avoided to a certain extent by the doctrine of part performance, and this part of S. 4 has been transferred to S. 40 of the Law of Property Act, 1925, but not so as to affect the law relating to part performance. With contracts relating to land the Report of the Committee does not deal. The other matters in S. 4 of the Statute of Frauds include guarantees—the section was varied as to these by S. 3 of the Mercantile Law Amendment Act, 1856—and agreements not to be performed within a year. Section 17 of the Statute of Frauds, which required for the enforcement of a contract for the sale of goods of the value of 10*l.* or upwards a memorandum in writing, or else acceptance of part of the goods or part payment, has been replaced by S. 4 of the Sale of Goods Act, 1893. The Committee recommend that all these enactments shall be repealed, and the enforceability of contracts placed on a new basis.—*L.J.*, 1937, *p.* 337.

The Doctrine of Consideration.—This new basis is found in the offer of alternative forms of contract; if there is no consideration the contract must be evidenced by writing; if there is consideration writing will not be necessary. This appears to strike at the root both of the Statute of Frauds and of the English doctrine of consideration as distinguished from the Roman *causa.* Consideration corresponds to the familiar *quid pro quo,* and this has hitherto been necessary for the validity of a contract merely in writing; with a contract under seal it is different, for sealing implies a consideration. According to the doctrine of *causa* a contract requires for its validity not necessarily a *quid pro quo*; a good reason for the contract, such as a moral duty, will suffice. The Report does not adopt this doctrine, but if the parties put the contract into writing, neither the reason nor consideration will matter. If they do not, then, in the absence of sealing, a *quid pro quo* will still be essential. The rule in *Pinnel's case* is to be abolished by recourse to the device of pretending, which was used so freely in the Property Acts. It is the draftsman's device that for a particular purpose something shall be "deemed" to be what it is not, *e.g.,* for the purpose of a statute a woman shall be deemed to be a man. And so *Pinnel's case* is to be ruled out by providing that an agreement to accept a smaller sum in discharge of a larger is to be deemed to have been made for valuable consideration; though, if the new agreement is not performed, the original obligation will survive.—*L.J.*, 1937, *p.* 337.

Humanising the Poor Law.—The Poor Law has not always been regarded as a model of consideration and humanity, but this, according to an address given recently by Sir Kingsley Wood, the Minister of Health, is the ideal which is now being aimed at. The address was given at Bristol on Saturday, the 1st instant, to the 25th Annual Conference of the National Association of Relieving Officers, and Sir Kingsley said that the Poor Law was now a social service; a humanitarian spirit animated its administration, and the human and personal touch had superseded old mechanical methods and routine. This represents a considerable advance on the administration of the Poor Law as depicted in Dickens' pages, but in social matters those are far distant days. To take the tramp off the road, and to persuade young men to enter hostels and train themselves for a useful life, these, Sir Kingsley Wood said, were the results of the present administration of the Poor Law, and the proceedings in Magistrates' Courts have been humanised on parallel lines by the development of the probation system and the establishment of juvenile courts. A cynic might say that juvenile courts have become necessary in consequence of the increase of crime among the young. But the increase has been explained by the unusually large number of boys who have in the last two years attained the "dangerous age" of 14 and 15, and improved administration of the law results, it may be, in their being oftener found out. At any rate, it is interesting to find both the Ministry of Health and the Home Office alive to the importance of humanising, the one the Poor Law, and the other the Police Court.—*L.J.*, 1937, *p.* 337.

Bailee or Licensor.—Of course, the Court of Appeal must always be right—unless and until its decision is reversed by the House of Lords. We feel much sympathy for the respondent in the recent case of *Ashby* v. *Tolhurst* (*Times*, May 7). He was deprived of a judgment, gained in the County Court, which appears to contain all the elements of justice and common sense. The respondent left his car in the appellant's car-park, a private piece of ground, and paid the attendant a fee for the privilege of leaving it there. The attendant gave him a ticket on which there was entered a clear declaration that the owners of the park would take no responsibility for the safe custody of cars left with them, and said that they were left entirely at owners' risk. While the owner was away a thief came and, by pretences which seem to us perfectly transparent, got possession of the car. He had not the ticket, he had not the key, he had nothing but such a story as any thief might make up. The respondent never saw his car again and sued for negligence and conversion. He won his case below, but made no impression on the Court of Appeal to which the park-owner carried him. Of course, a ticket may contain such conditions as

this, and if they are brought to the notice of the depositor they bind him. But, ticket or not, many people think that if a man holds himself out even as no more than a licensor to intending licensees, he is liable for a dereliction of common law duty as was here disclosed.—*L.J.*, 1937, *p.* 338.

Discretion in Divorce.—*Sheldon* v. *Sheldon* (*Townley, formerly Murray intervening*) 1937, 1 All. E. R. 779) is, indeed, a remarkable instance of judicial courage, of a learned Judge exercising his discretion upon broad and human principles in circumstances where, not many years ago, such an exercise of discretion would have been quite inconceivable. The petitioner for divorce admitted that for many years she had committed adultery in the nature of prostitution. The evidence of the parties was "utterly irreconcilable". Seduced by her husband, who was 13 years her senior, she stated that he had treated her after marriage with cruelty, given her no money, forced her to go on the streets, and had taken her earnings from her. Her husband, on the other hand, said that he treated her well, knew nothing about her mode of life until shortly before she left him, and had unsuccessfully endeavoured to reclaim her. Bucknill, J., accepting the evidence of the wife, held that the husband acquiesced in her conduct, and, indeed, that his conduct conduced to her adultery. They were married in 1922; there was a child born that year; she left him in 1928, and until 1934 she continued her mode of life. That was the difficulty of the case; but he had made it impossible for her to return, and had failed to keep up his covenanted payment of 25*s*. per week. Bucknill, J., after considering the principle laid down by Lord Merrivale, P., in *Apted* v. *Apted and Bliss*, (1930, P. 246, at p. 259) that "the interest of the community at large in maintaining the sanction of honest matrimony is a governing consideration," resolved to exercise his discretion in the petitioner's favour. There was no chance of a reconciliation; was the wife to be kept in "the same dreadful servitude" for ever? It was not in the interests of the State that this state of affairs should continue; and it was certainly in the interests of the child that some decent home should be set up. Bucknill, J., was very glad to grant her a decree.—*L.J.*, 1937, *p.* 339.

The Probation System.—Lord Hewart, C.J., again emphasised the importance and value of the probation system at a recent dinner in aid of the Clarke Hall Fellowship for the development of juvenile courts and probation, at which the Duke of Kent presided. The learned Lord Chief Justice pointed to the danger of a youth getting used to prison and emphasised his conviction that the real hope was to save the young offender. "If", the speaker said, "you look at any tolerably accurate account of the inhabitants of prisons you will find that an awful number of them went to prison for the first time when

they were quite young. The wise and prudent course is to save those youngsters from making acquaintance with gaol, a doctrine that has been universally recognised. The difficulty is to get the right people for the work. I have not sufficient words of praise for the devotion of probation officers. I am impressed with the fact that there are many delinquents still sent to prison at an early age. I do not wish to make any reflection upon any person who has to administer the criminal law, but nearly every morning when I sit in the Court of Criminal Appeal and hear appellants, I am impressed with the fact that many are sent to prison at a very early age. The root of this trouble, as is the root of so many troubles, is mere selfishness and the particular selfishness which exhibits itself in indolence. When a young offender has pleaded guilty or when he is found guilty by a jury, it is so easy either to bind him over to come up for judgment if called up or to pass a slight sentence of imprisonment—one, two or three months. What is really needed is the care and patience required. I am not drawing any distinctions or singling out any tribunal. To put an offender under the care of probation officers is a method that calls for a little care and thought, but in my opinion there is no single matter of greater importance in the administration of the criminal law of this country than a wise application of the probation system". We have previously alluded to this subject in these columns and, indeed, quoted words of the Lord Chief Justice in this connection. But its intrinsic importance and the occasion provided by the aforesaid speech justifies this further reference to the matter.—*S.J.*, 1937, *p.* 405.

Payment of Members.—The debate on payment of members which took place in the Commons this week reached a high level and, we think, a satisfactory conclusion. Most of the arguments against raising the salary of members from 400*l.* to 600*l.* a year were really arguments against the payment of any salary at all. The question of principle was settled, for good or ill, before the war, and our middle-aged readers know as well as the Prime Minister does that the cost of living has increased 50 per cent. since the halcyon days of King Edward the Seventh. It appears that the poorer members of the House are sometimes even unable to buy enough food for themselves and their families. Some people still think that such men should not be in the House of Commons at all; but it is now too late to say so. On the whole it is much better that they should be paid by the Paymaster-General than by their local supporters or unions. The other plan would make them mere delegates of the subscribing constituents and must militate against independence of thought and action. A fair salary will help independence. But will it produce the legislative ability for which lawyers hope and which the whole country needs?—*L.J.*, 1937, *p.* 437.

Signing a Will.—It is, of course, well known that a will may be good though not signed by the testator with his name. But if he does not sign there must be evidence that whatever mark was put on the will was put there in his presence and by his direction. An interesting case of the kind came before the President this week (*Pickerill* v. *Pickerill, Times,* June 21). A testatrix, unable to write and apparently too feeble to speak, asked her doctor to sign for her. This he did. In token of assent she pressed his hand. This was held a good execution. There are some interesting cases in the books Sir Creswell Creswell held in 1863 (*Jenkins* v. *Gaisford,* 3 Sw. and Tr. 93) that a testator could validly sign a will by telling his seqretary to mark it in the right place with an engraved signature. This, we may assume, impressed on the paper a copy of the testator's ordinary signature. The testator, as he got old, had difficulty in writing and got this engraving made, which his secretary often used for signing letters. The secretary was able to swear that the mark was put on the will by him both in the presence and by the express direction of the testator and in the presence of one of the attesting witnesses—the seqretary himself being the other. The learned Judge upheld the will. On the other side of the line is *Kevil* v. *Lynch* (Ir. 8 Eq. 244). The testator was not able to write and gave a priest instructions to prepare his will. This was correctly done, but the solicitor concerned went too far and signed the testator's name. It was shown that the testator verbally approved the will and actually put a pen on the name which the solicitor had written; but there was no evidence that the pen contained ink or that the testator made any mark with it. On these facts the Irish Court of Probate refused to presume due execution.—*L.J.,* 1937, *p.* 437.

Lying Affidavits.—Goddard, J., the other day, made some severe strictures upon "lying affidavits" set up under Ord. XIV with the object of obtaining time and leave to defend (*Times,* June 18). 685*l.* had been obtained on loan for an alleged invention to prevent motor cars from skidding; the defendant was neither present nor represented. "These lying affidavits", said the learned Judge, "will not be stopped until the Director of Public Prosecutions decides to prosecute a few dozen of these defendants for perjury". There appears to be an unnatural and excessive reluctance on the part of the authorities to institute prosecutions for perjury. Law, as a rule, lags behind public opinion, but in the matter of perjury public opinion appears to lag behind the law. If papers were more frequently impounded, the standard of truth in the witness-box would be vastly raised. But is there not a simpler remedy to hand? In the law, as elsewhere, prevention saves the time, the energy and the money of

the client. If the Masters of the Supreme Court, upon an application for summary judgment, did not automatically give leave to defend simply upon an *ipse dixit*—a "triable issue"—set up in an affidavit, but required a certain corroboration and refused leave to defend when they were not satisfied with the affidavit, or at least imposed terms, that would put a stop to lying affidavits and incidentally give the plaintiff at the outset the remedy to which he is entitled—as was clearly the intention of the Rules. But if the Court of Appeal is tramelled by a long list of decisions from taking this view [*see* the case of the *Polish Bank,* (1932) 2 K. B. 353], Ord. XIV, r. 1, should be amended.—*L.J.,* 1937, *p.* 438.

Blackstone and the Commentaries.—"Twice in the history of England", says Maitland, "has an Englishman had the motive, the courage, the power to write a great, readable, reasonable book about the English law as a whole". The two were Bracton and Blackstone. When Blackstone wrote, the American Colonies were waiting for the "reception" of English law, and they received it in the guise of his Commentaries. And after the American Republic started on its separate and vigorous course, the Supreme Court endorsed the doctrine that the Colonists had brought the law of their Motherland with them into the new country. But it was Blackstone's law that they brought, mainly through Colonial students who entered at the temple and carried the Commentaries back with them. Since those days law in the two great English-speaking countries has widely diverged, and in diverging it has become very different over the water and here from Blackstone's law. But none the less the debt of America to the first institutional writer who "taught jurisprudence to speak the language of the scholar and the gentleman" is still recognised, and when the American Bar Association paid their memorable visit to this country in July, 1924, one of the leading incidents was the presentation to the British Bar of the Statute of Sir William Blackstone which now stands in the Central Hall of the Law Courts, and the speech of the Hon. George W. Wickersham on the occasion in which he quoted Lord Bryce's description of the Commentaries as one of the links which best bind the United States to England.—*L.J.,* 1937, *p.* 439.

Blackstone without the Commentaries.—The above remarks deal with the memory of Blackstone as handed down in the Commentaries; but they have been suggested by an article on "Blackstone—Outside the Commentaries", by Mr. C. H. S. Fifoot, in this month's *Fortnightly Review.* Lord Birkenhead, when he included Blackstone in his *Fourteen English Judges,* recognised the variety of his activities: "He had a distinguished career at his University; he figured in Parliament; he attained at least a considerable position as an advocate, and he for ten years sat on the Bench. He

prepared a well-known series of reports". But Lord Birkenhead ends, as might be expected: "His chief fame rests on his *Commentaries.*" It is those activities outside his chief fame with which Mr. Fifoot deals. Had he not found in law his main attraction, he would be remembered as a vigorous administrator in University and college affairs at a time when Oxford was beginning to reawake to renewed life. He found the Clarendon Press in a state of suspended animation, and to ensure reform he made himself a master of "the mechanical part of printing". He anticipated the transport requirements of a later day. "He planned a western road from Oxford through Botley," and at Wallingford, of which he became Recorder in 1749, he promoted two new roads and secured the rebuilding of St. Peter's Church. He acquired practical acquaintance with architecture, embodying his learning in an essay on the "Elements of Architecture", and thus equipped he "supervised the new and handsome buildings of the Queen's College on the High Street, which, before his efforts, had been little better than a disgusting heap of ruins". And he made excursions into antiquities and literary criticism. "Antiquarian, reformer, man of business, man of letters, his interests were catholic enough to satisfy the most exigent of modern dons".—*L.J.*, 1937, *p*. 439.

Sir Harry Eve.—The dinner given in Lincoln's Inn Hall last Monday in honour of Sir Harry Eve was a fitting recognition of the position he attained during his long tenure of judicial office in the esteem and affection of the Chancery Bar. The dinner was organised by the Chancery Bar Association on behalf of past and present members of the Chancery Bar, and from the speech in which Lord Maugham recounted Mr. Justice Eve's career and his character as a Judge it would seem that the taste for advocacy acquired by listening to the Tichborne trial diverted him from sheep farming in Australia to the practice of the law in England. However that may be, it was generally understood that Mr. Justice Eve was equally at home in the country and on the Bench, and so no doubt there came to him the character of a Judge not less humane than ltarned, well described in verses by "J.M.G.", which graced the menu card:—

> In human nature deeply versed,
> To human frailties wisely blind,
> Courageous, lucid, patient, fair,
> Considerate, courteous and kind.
>
> Not his the laboured epigram
> Or jest evolved by midnight oil,
> But happy and impromptu wit
> That sparkled through the day's dull toil.

—*L.J.*, 1937, *p*. 39.

Caring for Children.—The decision of the Court of Appeal in *Ellis* v. *Fulham Borough Council,* (1937) 3 All. E. R. 454, on which we made comment last week, has been followed by another on closely similar lines (*Coates* v. *Rawtenstall Corporation, Times,* July 14). This was the case of a little boy less than four years old who was badly injured while sliding down a "chute" at the defendants' playground for children. The small boy was taken there, we suppose, for a treat by his cousin, a boy of 14. Together they went down the chute, the child safely lodged between his elder's knees. At the bottom of the chute some mischievous or careless person had left a chain across the fairway. It could not have been left or placed there if the defendants had kept their chains (which they used to close the chute on Sundays) in proper safety. Of course they did not know that this chain was in the position which caused the accident; but they either knew or ought to have known that if chains are left about unfastened mischievous boys will get at them and may cause accidents such as that which occurred. The decision seems to give ground for the gloss which we suggested last week as an addition to Lord Justice Greer's judgment in the *Walthamstow case* (*ante,* page 23). Even a licensee, we should say, may claim to be protected against dangers of which the author ought in reason to know, whether he does know of them or not.—*L.J.,* 1937, *p.* 40.

Copyright.—Many people who have adventurous experiences in life undertake to commit them to paper in such form as to make them palatable to the public. So a man may have won a thousand races on the turf, escaped from Chinese pirates and been charged by a rhinoceros which he shot at the last instant, and yet, when he comes to write about these things, be a mere child. This is the sort of thing which happened in the case of *Donoghue* v. *Allied Newspapers,* (1937) 3 All. E. R. 503, and a few years ago led to the decision in *Evans* v. *Hulton,* (48 T.L.R. 489), where all the cases are collected. If the man with these thrilling experiences in his memory sits down beside a mere secretary who writes or types everything at his dictation, of course the secretary takes no copyright. But sometimes this mere child, as we call him, goes to a professing journalist. There are many whose skill will make his adventures appear even more hair-raising than in truth they were. They know, too, just what those tiresome editors want. If this is done the copyright is in the journalist. Unless the mere child is careful to make a pretty strict agreement with him he will have no chance in the Chancery Division.—*L.J.,* 1937, *p.* 41.

Before His Time.—There was a peer of the County Kerry, in what is now known as the Irish Free State, who was also a member of the House of Lords about the middle of last century. He had

never made a speech in the House. That is to say, until the time when, according to the reports handed down in the said Kerry County or Kingdom, an important measure of reform was about to be introduced. He then declared that he would make his maiden speech, and dropped a hint that his intervention in debate would be sensational and decisive. The whole kingdom and county was agog with pride and expectation of their peer; but when the report of the Lords' debate was received, it was found that his remarks, though audible in every part of their Lordships' House, were confined to a paraphrase of certain Apostolic words. The verbatim report was as follows: "He that provideth not for those of his own household is worse than an infidel, and hath denied the faith."

These words, it was said, had no perceptible bearing on the measure before the House or influence on its ultimate form. But can it be said with certainty that his words did fruitless fall, having regard to the following recent report?

"Nearly 250 members of Parliament, of all political parties, have signed a memorial to the Prime Minister asking the Government to grant facilities for the Inheritance Bill to be passed through its remaining stages during this Session. The Bill gives to a spouse or child left without reasonable maintenance the right of appeal to the Courts, which are empowered to take all the circumstances of the case into account, and, if they think fit, to make suitable provision out of the estate of the testator."—*L.J.*, 1937, *p.* 52.

Of Contempt and Imprisonment.—To those justices who for the enforcement of matrimonial and similar orders have an abiding faith in the persuasive power of imprisonment, I would commend the attitude of High Court Judges as expressed by Langton, J., in his remarks to that Mr. Richard Frederick Tagg who had spent a night in custody for contempt in respect of his failure to appear on subpœna in a divorce case:

"You have set the law at defiance. Your statement that you spent the conduct money is neither an explanation nor excuse. You would have no one to blame but yourself if I committed you to prison for such a term as I thought would purge you of contempt of Court, but in common with all other Judges I have the greatest reluctance in depriving any young man of his liberty."

The statement might also be favourably compared with that of a bygone Judge who thus addressed a wrongdoer: "Do you not know that I could, if I would, sentence you to a period of imprisonment for exceeding the term of your natural life?"—*L.J.*, 1937, *p.* 52.

Masters who Reached the Bench.—Among those of later times among the Masters in Chancery who, having served what may be called an apprenticeship in that office, were called to come up

higher, was Alexander Thompson, who was appointed a Master in 1782, and four years later was promoted to the Bench of the Court of Exchequer, and, after twenty years as a puisne, was told to come still higher as Chief Baron. Foss tells us that to his deep learning was united a great love of jocularity. The wags of the day had their little gibe by calling him "The Staymaker," from a habit he had of checking witnesses who were going too fast. A later Master, William Alexander, was appointed a Master in 1809 by Lord Eldon, and raised to be Chief Baron in 1824 "to the surprise and somewhat to the dissatisfaction of the Profession". Ultimately he was induced to resign to make room for Lord Lyndhurst, who, having held the great seal, was content to take the lower seat still the higher was again available for him, as it was in 1834. The latest instance of a Master in Chancery attaining to the higher position of judge was Richard Torin Kindersley, who was made a Master in 1848, and so remained till 1851, when he was appointed a Vice-Chancellor. One of the oddest instances, however, of vicissitudes of the Profession was the acceptance by Sir William Horne of the post after holding the great position of Attorney-General—a fresh illustration of the familiar saying that the race is not always to the swift or the battle to the strong.—*L.T.*, 1937, p. 52.

Northern Ireland.—The constitution of Northern Ireland is an admirable document and has on the whole worked well in a difficult period. Like all Parliaments, however, whose powers are circumscribed by a fundamental instrument, the Parliament of Ulster is liable to have its measures challenged on the ground that they exceed those limited powers. This occurred in the case of *Gallagher* v. *Lynn* which was decided a few days ago in the House of Lords [(1937) 3 All. E. R. 598]. The appellant was a dairy farmer in a part of Ireland which is not within the jurisdiction of the Parliament at Belfast. That Parliament had passed a Milk Control Act which provided that milk dealers must not sell milk without a licence. The terms of the licence were such that full compliance could not be made with them unless the Northern Ireland Inspectors could walk over the border and function beyond it. The appellant farmer apparently ignored the law as *ultra vires* and sold milk in Londonderry without a licence. When he was fined he challenged the validity of the Milk Act as a law "in respect of trade" with a place outside Northern Ireland. In no Court has he made good his challenge. Following the "pith of substance" Canadian cases (such as *A.G. for British Columbia* v. *A.G. for Canada*, 1937, A.C. 368), the House held that the law was in its main object a law for the health of Northern Irishmen. It could not be challenged because, incidentally, a farmer in Donegal felt its effects.—*L.J.*, 1937, *p.* 57.

The Rest of Ireland.—Whilst Northern Ireland appears to be working happily, subject to these unavoidable challenges, under its Constitution of 1920, the rest of Ireland has by a small majority approved of and "given to itself" a new one. The draft Constitution of "Eire" is an interesting document. It makes a bold claim to the whole territory of Ireland—the "Free State" as constituted in 1922 and the area of jurisdiction of the Ulster Parliament; but admits that this claim cannot at present be made good in fact or law. The Constitution therefore only claims at present to be a Constitution for the Free State. In choosing the component parts of their instrument, the designers have had, or taken, a perfectly free hand. They have used many English precedents, but they have also looked across the ocean and borrowed here and there from the Constitution of the United States. The President will be a powerful person. Once elected, he holds office for seven years and he is to have not only a Ministry but also a Council of State. The latter body he is directed by the Constitution to consult on certain occasions, and on these he is not required to act on ministerial advice. The possibility of a conflict between the President's Ministers and his Council seems at all events possible, and we cannot find in the document any prepared instrument for settling it. The reference by the President of questions on *ultra vires* legislation directly to the Supreme Court is no doubt a sound idea. Mr. De Valera has learnt something from the recent troubles of Mr. Roosevelt.—*L.J.*, 1937, *p.* 57.

His Majesty's Judges at the Mansion House.—The Lord Mayor, Sir George Broadbridge, invited a large number of distinguished guests to a banquet at the Mansion House on July 6 to meet His Majesty's Judges. In proposing the toast of the Lord Chancellor, Viscount Hailsham, the Lord Mayor said that he was the son of a wonderful father, the founder of the Polytechnic. As Douglas Hogg, Jun., he had been brilliant and in great request; as Douglas Hogg, K.C., no less so. He was an old Etonian, had served in the South African War, and was an ex-president of the M.C.C. In 1922 he had entered Parliament, whence his rise had been rapid: Attorney-General, Lord Chancellor, Secretary of State for War, Leader of the House of Lords, and now Lord Chancellor for the second time, the greatest honour in the world of law. The whole company were very pleased to see him back again after his serious illness. The administration of the law would never suffer, nor the debates in the House of Lords lose any of their impartiality, while he was on the Woolsack.

Viscount Hailsham, in reply, said that a Lord Chancellor spoke in the Mansion House as in some sense representing the law, and spoke there with peculiar appropriateness, for the City had been for so many years not only the repository of ancient tradition, but

dependent for its daily existence on the proper administration of the law and on its adaptation to modern needs and purposes. The past twelve months had seen the departure from the Bench of four men who, in one capacity or another, had given the best years of their lives to the administration of justice. His old and dear friend, Lord Blanesburgh, after bearing for years the burden of ill-health, had found himself unable to sustain any longer the toil of the work of a Lord of Appeal in Ordinary. The Bar and Bench of the Chancery Division would miss the ever-genial and ever-young presence of Sir Harry Eve, and their King's Bench colleagues would long miss the experience of Sir Thomas Horridge and the distinguished attainments of Sir George Talbot. The whole profession would offer its best wishes to all these men in their retirement, and its gratitude for their years of service.

The Lord Mayor, proposing the health of His Majesty's Judges, said that British justice was the admiration of the world. One thing he admired about the judges was that they all seemed to attain a ripe old age. He supposed that the nice restful life, sitting all day on the Bench, being lulled to sleep by the voices of witnesses and Counsel, was one of the pleasantest lives a man could have. It seemed to agree with the Lord Chief Justice, who appeared to have taken on a fresh lease of life after a very distinguished career including the offices of Solicitor-General, Attorney-General, Cabinet Minister, and one of the British signatories to the Irish Peace Treaty.

The Lord Chief Justice, Lord Hewart, in reply, said that Judges lived long because, before they got to their comparatively exalted and decidedly impecunious position, they had gone through a very hard mill, having survived which they could survive anything on earth. He congratulated Lord Hailsham on appearing at a Mansion House again restored to health, and declared that nothing was less desirable or desired than that there should be a change in the office of Lord Chancellor for many years. Sir Thomas Horridge and Sir George Talbot were both dear friends of his, and both had retired earlier than they would have wished, not because of their nice restful life, but because of prolonged public service, during which each of them had been compelled to struggle with ill-health. Their friends would deplore their loss and cherish the recollection of their courage. The great resources of an incomparable Bar were, however, always ready to provide successors. In the new King's Bench Judge, Mr. Justice Wrottesley, they had not only a lawyer but also a scholar. He would indeed be a reinforcement to the King's Bench Division.

Lord Atkin, who proposed the health "The Profession of the Law", said: "We who profess and call ourselves lawyers now have the opportunity to proclaim ourselves lawyers and to diminish our own shortcomings, an opportunity not always given to or used by

those who propose this toast. They generally suggest in a friendly and jocular manner that lawyers are, after all, persons who promote strife, pervert truth and, for a large reward, darken counsel. I am sorry to say that people sometimes think it necessary to address that jibe to lawyers, either as to the amount of their fees or as to the uncertainty of their advice. The so-called uncertainty of the law is not in the main due to any defects in the law or in lawyers, but to the apparently unconquerable disability of laymen to express themselves with inevitable clearness."

The Solicitor-General, Sir Terence O'Connor, K.C., said that the order that he should wear levee dress with a sword at the Banquet was characteristic of the popular view of his profession. "It is as combatants," he said, "that the public like to think of us advocates; it is as combatants that they hire us, and it is from those who wish to do battle that we gain our bread and our butter, and the more they wish to fight the more butter we get. I should bore many of you by reminding you of the Indian case where one Indian was suing another for the trespass of the second Indian's cow on his field. It was discovered for the first time in the Privy Council that the one Indian had no cow and the other Indian had no field. Among others who provide fodder for the Bar are those who insist upon their rights. Sir Philip Game, the Commissioner of Police, in connection with Belisha crossings, referred to

'. . . . . poor Will Jay,
Who died defending the right of way.
He was right, dead right, as he strode along,
But he's just as dead as if he'd been wrong!'

If it were not for the Will Jays and the Indian temperament we should have a poor time as practising barristers. When we are chided for our advocacy we are apt to forget sometimes that the law is not an exact science. Thank God for that! There is no absolute in the law, and there is a great grain of wisdom in the reply of the gentleman who, when he was asked 'What is the Rule in *Shelley's case*?', answered 'that it was the same as in any other case, because the law was no respector of persons'." Sir Terence also commemorated the student who, when asked to distinguish between a mortgagor and a mortgagee, had answered, "There is no distinction between a mortgagor and a mortgagee since the Sex Disqualification (Removal) Act," and observed: "Behind this frivolity there is perhaps this background of reality. We can believe, consistently with being advocates, that we are performing in an ordered community a service than which there is no higher or more dignified—the obtaining of justice between subject and subject and between monarch and subject."—*L.J., 1937, p. 70.*

The Long Vacation.—The autumn cessation from forensic strife, always known as the Long Vacation, has a long history be-

hind it, as well as a present satisfaction in the joys which it brings to the judges and to those in large practice at the Bar, although perhaps with less satisfaction to many a junior. At one time, too, its length was much more extended than it is now, it having apparently been considered good business to shut the courts for a very long period. Formerly it went on till November the 2nd, the morrow of All Souls, hence the last and farewell toast of the summer Assizes of "Cras Animarum", which became meaningless when, as someone said, sacrilegious hands were laid on the long vacation and the courts resumed work long before the dawn of the morrow of All Souls. What is the history of the terms and the vacations? Blackstone is not very generally read nowadays, more's the pity, but if the curious in such matters will turn to Book III of his Commentaries they will find much interesting information on the subject. There we read that the Christian magistrates, to distinguish themselves from the heathen who were extremely superstitious in the observance of their *dies fasti et nefasti,* went into a contrary extreme, and administered justice upon all days alike, till at length the Church interposed and exempted certain seasons "from being profaned by the tumult of forensic litigations". Thus we got the time of Advent and Christmas, which gave rise to the winter vacation; the time of Lent and Easter, which created that in the spring; the time of Pentecost, which produced the third; and the Long Vacation, between Mid-summer and Michælmas, which was allowed for the hay time and harvest. Sundays and certain other days were also included in the same prohibition.—*L.T.,* 1937, *p.* 108.

The Terms.—As Blackstone goes on to point out, when our legal constitution came to be settled, the commencement and duration of the law terms were fixed with an eye to the canonical prohibitions. By Edward the Confessor it was ordered that from Advent to the octave of the Epiphany, from Septuagesima to the octave of Easter, from the Ascension to the octave of Pentecost, and from three in the afternoon of all Saturdays till Monday morning, the peace of God and of Holy Church was to be kept throughout the kingdom. So extravagant was, afterwards, the regard paid to these holy times that in the reign of Edward I no secular plea could be held, or any man sworn on the evangelists, in the time of Advent, Lent, Pentecost, harvest and vintage, the days of the great Litanies, and all solemn festivals. But it seems that the ecclesiastics were accommodating, for they sometimes granted dispensations that assizes might be taken in certain of these holy seasons. Still later a general dispensation was established by Parliament which, by a statute, declared that "forasmuch as it is great charity to do right unto all men at all times when need shall be . . . . assizes of novel *dissesin,* it was provided that *mort d'ancestor* and *darrein presentment* should be taken in Advent, Septuagesima,

and Lent, even as well as inquests may be taken; and that at the special request of the King to the Bishops". The portions of time not included in the prohibited seasons were divided into four, and named according to the festival or saint's day that immediately preceded their commencement—Hilary, Easter, Trinity, and St. Michæl, which are still familiar to us as designating the sittings.—*L.T.*, 1937, *p.* 109.

Sittings after Terms.—As the late Sir John Hollams in his interesting "Jottings of an old Solicitor," truly said, almost everything connected with the law courts and the administration of the law has completely changed; it certainly had within his extended memory. Thus, he tells us that the sittings for the trial of jury cases after term were limited to twenty-four days after Hilary, Trinity and Michælmas terms, and six days after Easter term. No London or Middlesex special jury cases could be tried except in the limited time allowed after Hilary, Trinity and Michælmas terms, but common jury cases were taken in term time. When Sir John began his life professionally the courts were sufficiently robust to begin tht jury list at 9-30 in the morning, but in those days there were no long cases, or very few, and Sir John added that owing to the strict rules of evidence then prevailing when neither of the parties were competent witnesses, the plaintiff in many instances was unable to prove a *prima facie* case and consequently was non-suited. As Mr. Theobald Mathew reminded us recently in his study of *Bardell* v. *Pickwick*, Mr. Jackson, of the firm of Dodson and Fogg, intimated when serving the supœnas on the Pickwickians at the George and Vulture, that the trial would "come on in the sittens after Term, Fourteenth of Febooary, we expect"; and it came on as we all know at the Guildhall.—*L.T.*, 1937, *p.* 109.

BOOK REVIEWS.

THE LAW OF PAKKI AND KATCHI ADAT AND TEJI-MANDI CONTRACTS by Ramniklal R. Mody, B.A., LL.B., Solicitor, High Court, Bombay, second edition, 1937. Published by Messrs. N. M. Tirupati & Co., Bombay. Price Rs. 3.

This book deals with the nature and incidents of Pakka Adatya, Katcha Adatya and Tej-Mandi transactions which are dealt with in Parts I, II and III respectively of the Book. These transactions are largely, if not solely, prevalent in the Bombay Presidency as a result of the forward business in the Bombay market. The learned author points out that the nature of the first two came up before the Bombay High Court only in 1905. The legal incidents of a Pakka Adatya transaction is somewhat complicated. The relation of a Pakka Adatya to the constituent is, in some respects, analogous to

that of an agent to the principal and in some other respects resembles that of a principal to a principal. On the other hand, the Katcha Adatya stands to the constituent in the position of only an agent. The Tej-Mandi transactions were till recently considered to be of a gambling nature, though recently it has been held that there are not always of that nature. The book under review explains these very complicated transactions and their legal incidents with reference to all the decided cases on the points and it will be found useful by those who want to engage in them and to lawyers who may have to deal with them in their practice.

COMMENTARIES ON THE PROVINCIAL INSOLVENCY ACT (V OF 1920) by Ram Lal Anand, B.A., LL.B., Advocate, High Court, Lahore and Ganesh Datta, B.A., M.R.A.C., Barrister-at-Law and Advocate, High Court, Lahore, 1937. Published by University Book Agency, Lahore. Price Rs. 6.

This is a full and up-to-date commentary on the Provincial Insolvency Act. It is well known that decisions under this Act are multiplying and an up-to-date commentary from the pen of one who as an Official Receiver had to do with the practical working of the Act will be found useful, as the difficulties arising in practice will be found solved. The decisions under the various provisions have been noticed and considered in their appropriate places in the book. To add to the utility of the book, the learned author has given the rules framed under the Act by the Allahabad, Bombay, Calcutta and the Madras High Courts. There are also additional model forms and pleadings given at the end of the book. We commend this book for the use of lawyers and judges and others having to deal with the enactment.

PRINCIPLES OF EQUITY by G. A. Vaidya, B.A., LL.B., Advocate, High Court, Bombay, 1937. Published by Karnatak Publishing House, Bombay. Price Rs. 4.

This is a hand-book elucidating the principles of equity intended mainly for law students. The learned author has in the book followed the classification of the subjects adopted by Snell in his well-known book. The topics are dealt with in various chapters with great lucidity intelligible to persons having no previous acquaintance with the subjects. In all appropriate places the learned author has pointed out the extent to which the equitable principles have been adopted in this country by legislation or otherwise. We have no doubt that the book will be found very useful to the students and beginners in law.

CONSTITUTIONAL LAW by G. N. Joshi, M.A., LL.B., 1937. Published by Karnatak Publishing House, Bombay. Price Rs. 3-8-0.

In this book the learned author who is himself a Professor of Constitutional Law for the Government Law College, Bombay, expounds the principles of Constitutional Law in a manner easily intelligible to the Indian students preparing for law examinations. He has collected his materials for the book from the well-known treatises on the subject and the book under review supplies the need of a text book for the students of the Indian Universities. The book is divided into five parts, the first is the introduction, the second part deals with the general principles of the English constitution, the third the structure of the principal organs of the Government, the fourth with the liberties of the subject and the fifth with the British Empire. We are inclined to agree with the Honourable Mr. Justice Wadia in his observation about the book that the Indian Constitution at the present time deserves to be allotted a much larger space in the book than what the learned author has allotted to it. We have every hope that the book will be found useful by those to whom primarily intended.

INDIAN COMPANIES LAW AND PRACTICE (including Forms and Precedents) by Sohrab R. Davar, Barrister-at-Law and Advocate, with a Foreword by the Honourable Mr. Justice H. J. Kania, B.A., LL.B., High Court of Judicature, Bombay, 1937. Published by Messrs. Butterworth & Co. (India), Ltd. Price Rs. 24 (two volumes).

Since the recent amendment of the Indian Companies Act, several commentaries of the Indian Companies Act have appeared which from the point of view of the lawyer are of great use. Davar's treatise on the Indian Company Law approaches the subject from the point of view of businessmen and company promoters without at the same time sacrificing his usefulness to lawyers as a legal text book. It is not written as a commentary on the Act but the subject is divided in nineteen chapters, each chapter dealing with a distinct aspect of Company Law. The book is one of the most comprehensive treatises on Indian Company Law in two stout volumes of over one thousand pages each. All the decisions on the subject have been noticed in their proper places. The value of the work is considerably enhanced by the various forms and precedents which the learned author has collected from various sources and presented to the reader. The learned author has the additional advantage of appreciating the difficulties in learning this branch of the law from his great experience of teaching Company Law in the College of Commerce conducted by him. We have no doubt that this work will find a prominent place in the library of company lawyers, company promoters and businessmen.

THE FEDERAL LAW JOURNAL OF INDIA, edited by A. N. Aiyar, Advocate, High Court, Madras. Published by Company Law Institute, Thiagarayanagar, Teynampet.

The establishment of a Federal Court in India naturally calls for the decisions of that tribunal to be reported in legal journals, as they are pronounced by the highest court in the land and are therefore of very great authority. Mr. A. N. Aiyar who is well-known to lawyers in this country is doing a distinct service by publishing the Federal Law Journal of India, the first issue of which has been placed in our hands. The learned editor proposes to give in this journal not only the reports of the decisions and proceedings of the Federal Court of India but the decisions of the Privy Council and the decisions of the High Courts and other superior Courts in India dealing with questions arising on the Indian Constitution. He will also give in the pages of the journal the Statutes of the Federal Legislature, the Parliamentary measures affecting India, the Orders in Council and the Rules and Regulations under the Government of India Act. It is needless to say that there will be the editorial notes on all these matters by the learned editor. We feel sure that the publication will be found of great use to lawyers and judges on constitutional points and look forward to a prosperous career for the journal.

SUPPLEMENT to S. Ranganatha Aiyar's HAND BOOK OF CRIMINAL PROCEDURE, 1937 Edn. Price Re. 1.

Mr. Ranganatha Aiyar's Hand Book of Criminal Procedure represents the lectures he delivered to the apprentices-at-law under the auspices of the Bar Council, Madras. The present brings that work up-to-date in the matter of case-law as well as in the matter of textual amendments of the Criminal Procedure Act necessitated by the recent Government of India Act. The book will be found useful not only by the apprentices for whose benefit it is mainly intended but also by practitioners who will find in it in effect a sort of a supplement to his bigger book on the Criminal Procedure Code.

[END OF VOL. II.]